

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNY RAVIART,

Petitioner,

No. CIV S-03-0164 MCE EFB P

vs.

JAMES YATES, Warden,

ORDER

Respondent.

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Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 28, 2007 denial of his application for a writ of habeas corpus.¹ Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).


¹ Petitioner’s September 13, 2007 notice of appeal was filed after the Magistrate Judge’s findings and recommendations were issued, but before final judgment was entered. However, pursuant to Rule 4(a)(2) of the Federal Rules of Appellate Procedure, the notice of appeal is deemed timely filed.

1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).²

5 Petitioner has made a substantial showing of the denial of a constitutional right in
6 the following issues presented in the instant petition: (1) whether sufficient evidence supported
7 his conviction on the charge of assault with a firearm; (2) whether instructional error violated his
8 right to due process; and (3) whether his right to due process was violated when the trial court
9 engaged in improper questioning of witnesses.

10 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
11 issued in the present action.

12 Dated: October 12, 2007

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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25 ² Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.